

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Chapter 11  
)  
BENYAM MULUGETA and PAULA R. ) Case No. 09-51900  
MULUGETA )  
  
Debtor. )  
\_\_\_\_\_ )

FILED  
APR 29 2010  
United States Bankruptcy Court  
San Jose, California

**APPLICATION UNDER 11 U.S.C. §§327(a) AND 328(a) FOR ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF  
CALIFORNIA AS REAL ESTATE ADVISOR AND BROKER TO THE DEBTOR**

The above-captioned debtor and debtor-in-possession (collectively, the “Debtor”), through its undersigned counsel, hereby submits this application (the “Application”) to the Court for entry of an order under sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing the Debtor to retain and employ Marcus & Millichap Real Estate Investment Services of California (“MM”) as real estate advisor and broker to the Debtor pursuant to the terms of that certain “Agreement Among Debtors and Marcus & Millichap” dated as of April 29, 2010 (the “Agreement”), attached hereto as Exhibit A. In support of the Application, the Debtor respectfully states as follows:

**Background**

1. On March 18, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its businesses and manage its property as debtor in possession.

2. The Debtor owns commercial real property operated as a mixed-use property with 21 multifamily and 4 commercial units located at 353 Grand Ave. Oakland, Ca. 94610 (the

*“Property”*). The Debtor desires to hire MM to provide real estate advisory and brokerage services with respect to the Property.

### **Jurisdiction and Venue**

3. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 327, 328, and 363 of the Bankruptcy Code and Bankruptcy Rule 2014.

### **Requested Relief**

5. By this Motion, the Debtor seeks to employ and retain MM as its real estate advisor and broker to market and sell the Property. Accordingly, the Debtor respectfully requests that the Court enter an order under sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) authorizing the Debtor to employ and retain MM as its real estate advisor and broker to market and sell the Property.

### **Services to be Provided**

6. MM is an experienced real estate advisor and broker in complicated transactions both in and out of bankruptcy. On a company wide basis, MM is one of the largest commercial real estate services companies in the country. MM consists of nearly 1400 agents in over 65 markets across the country. In 2007, MM completed over 5000 transactions and sold over \$20.7 billion of commercial real estate properties. The team that will work on this case consists of members from the MM Multi-Housing Group, as well as specialists from the MM Special Assets Group, who focus on bankruptcy transactions. MM has been hired by clients across the United States to provide advisory services and facilitate sales in situations such as this.

### **Summary of the Agreement**<sup>1</sup>

7. A copy of the Agreement between MM and the Debtor is attached hereto as Exhibit A. The Debtor requests that they be permitted to engage MM under the terms of the Agreement. The Agreement contemplates that MM will be retained as the Debtor's exclusive agent effective as of the date of the Agreement and continuing for one hundred eighty days or through the date of the transfer of the Property, whichever occurs first.

8. The services to be provided by MM include the following:

- a. The preparation of a marketing program which may include marketing the Property through newspapers, magazines, journals, letters, fliers, signs, telephone solicitation, or such other methods as MM may deem appropriate;
- b. The preparation of advertising letters, fliers and/or similar investment and sales materials which would include information regarding the Property;
- c. Locating parties who may have an interest in acquiring, investing in or financing the Debtor or the Property;
- d. Circulating materials to interested parties regarding the Property;
- e. Responding to, providing information to, communicating with, negotiating with and obtaining offers from interested parties, and making recommendations to the Debtor regarding any offer; and
- f. Communicate regularly with the Debtor and other parties-in-interest in connection with the status of MM's efforts.

9. MM shall receive a Transaction Fee for any Transaction that occurs, to be calculated as six percent (6.0%) of Gross Value.

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<sup>1</sup> Certain terms in this Application are capitalized as they are defined in the Agreement. Please refer to the Agreement (attached as Exhibit A) for further clarification of these terms. The following is only a summary of the key terms to the Agreement. To the extent that any portion of this summary can be construed to conflict with the terms as forth in the Agreement, the terms as set forth in the Agreement shall govern.

**Notice**

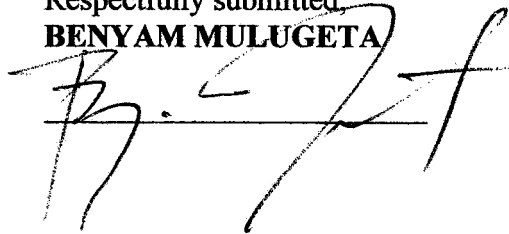
Notice of this Motion has been provided to (a) the United States Trustee for Region \_\_, \_\_\_\_\_ (b) counsel to the Debtor's secured lenders; and (c) all parties that have requested notices in these Chapter 11 Case or that otherwise receive notice through the Court's electronic filing system. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

**WHEREFORE**, the Debtor requests that the Court enter an order (i) authorizing and directing the Debtor to retain MM as the Debtor's exclusive real estate advisor and broker with respect to the Property pursuant to the terms of the Agreement, and (ii) granting such other and further relief the Court deems just and proper.

Dated: April 29, 2010

Respectfully submitted,

**BENYAM MULUGETA**

A handwritten signature in black ink, appearing to read 'B. Mulugeta', is written over a horizontal line. The signature is stylized and extends to the right of the line.